

**KOBAYASHI
SUGITA &
GODA**
ATTORNEYS • AT • LAW

999 Bishop Street, Suite 2600
Honolulu, Hawaii 96813-4430

Telephone: 808-539-8700
Facsimile: 808-539-8799
E-Mail: ban@ksglaw.com

Bert T. Kobayashi, Jr.*
Kenneth Y. Sugita*
Alan M. Goda*
Dale W. Lee*
Lex R. Smith*
David L. Monroy*
Wendell H. Fujii*
Robert K. Ichikawa*
Janeen-Ann A. Olds*
Clifford K. Higa*
Charles W. Gall*
John F. Lezak*
Larry L. Myers*
Craig K. Shikuma*
Christopher T. Kobayashi*
Ruth K. Oh*
Burt T. Lau*
Ronald T. Ogomori*
David B. Tongg*
Bruce A. Nakamura*
Lanson K. Kupau*
Jonathan A. Kobayashi*
Nathan H. Yoshimoto*
*A Law Corporation

Brendan S. Bailey
George Gusman III
Kenneth M. Nakasone
Curtis K. Saiki
Jesse W. Schiel
Joseph A. Stewart
Robert A. Ueoka
Lauren U. Van Buren
Thomas H. Yee

February 27, 2006

The Honorable Carlito P. Caliboso
Chairman
Public Utilities Commission of the State of Hawaii
465 S. King Street, #103
Honolulu, Hawaii 96813

FILED
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PUBLIC UTILITIES
COMMISSION

Re: Petroleum Reporting Extension Request

Dear Chairman Caliboso:

Thank you for your February 17, 2006 letter in response to our letter dated January 13, 2006 on behalf of Shell Oil Company ("Shell") seeking additional information and clarification of the December 20, 2005 letter requesting information and attaching prescribed data collection forms from the Public Utilities Commission ("PUC"), the Dept. of Business Economic Development & Tourism ("DBEDT") and the State Petroleum Commissioner ("December 20th Information Request").

Shell sincerely appreciates the PUC's reasoned and measured approach with regard to the various information requests and we would like to ensure the PUC that Shell stands ready to cooperate and comply with all requests for information presented to it. Shell also appreciates the opportunity to explain the basis for some of the concerns that it has regarding the form of requests that have been made.

Shell believes that our January 13, 2006 letter was needed to have an appropriate amount of time to compile the information requested in the PUC's December 20th Information Request, and also to ensure that a proper, valid protective order specifically covering the confidential information requested from Shell, was in place. While Shell is determined to be cooperative in providing requested information to the appropriate regulatory agencies, Shell is equally determined to avoid unintended consequences regarding the handling of sensitive competitive data. With this in mind, Shell appreciates the opportunity to address some of the concerns raised in the PUC's letter.

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As to the PUC's note that:

In its letter dated January 13, 2006, Shell claims that it "has a serious concern as to whether there is a current protective order that properly covers the submittal of said information in response to a direct request from DBEDT and the Hawaii State Petroleum Commissioner." See Shell's January 13, 2005 letter at 2. Shell, however, should have (and appears to have) known months ago that the Agencies would be requesting the petroleum information identified in the Agencies' December 20th letter by virtue of the September 7th letter, as it participated in drafting Protective Order No. 05-PO-12 in preparation for the Agencies' Petroleum Information Request.

In anticipation that the information requested by the Commission and DBEDT would contain information confidential to the parties, Shell, along with Chevron U.S.A. Inc. ("Chevron"), Tesoro Hawaii Corporation ("Tesoro"), Hawaii Petroleum Marketers Association ("HPMA") members, and the Division of Consumer Advocacy ("Consumer Advocate") (collectively, the "Parties"), entered into Protective Order No. 05-PO-12.

See PUC's February 17, 2006 Letter at pp. 6-7.

Shell has a present concern as to whether Protective Order No. 05-PO-12 covers confidential submittals made directly to the PUC, DBEDT, and the Petroleum Commissioner under the statutory authority afforded under HRS Chapters 486J and 125C. Shell believes that Protective Order No. 05-PO-12¹ was only intended to respond to and cover the PUC's Request for Interim Reporting dated September 12, 2005.² The PUC made its request for Interim Reporting dated September 12, 2005 pursuant to the PUC's statutory specific authority to monitor gas cap *compliance* under HRS Chapter 486H. Therefore, Shell believes that the scope of said order was limited to confidential submittals made pursuant to the PUC's requests for information under HRS § 486H-13(m).

¹ A copy of Protective Order No. 05-PO-12 is attached hereto as Exhibit A.

² A copy of the PUC's Request for Interim Reporting dated September 12, 2005 is attached hereto as Exhibit B.

A. Shell believes that Protective Order No. 05-PO-12 currently only covers the PUC's request for information to determine gas cap compliance made pursuant to HRS § 486H-13(m)

To provide the proper frame of reference, while the September 7, 2005 letter included a preliminary outline of what DBEDT, the Petroleum Commissioner and the PUC might be requesting under the authority granted to them by HRS Chapters 486H, 486J, and 125C, the September 12, 2005 Request for Interim Reporting only involved the PUC's request to determine gas cap compliance under HRS Chapter 486H:

As an interim measure only, prior to the availability of the reporting forms, the Commission requests that your company – as well as all other manufacturers, wholesalers and jobbers – submit to the Commission documentation that clearly demonstrates it has been complying with the gas price caps that have been set since the Gas Price Caps Law became effective on September 1, 2005.

See September 12, 2005 Request for Interim Reporting at p. 2. Nothing in the September 12, 2005 Request for Interim Reporting addressed anticipated future requests by DBEDT or the Petroleum Commissioner. What the Request for Interim Reporting did require was that the parties – within a week of receiving this Interim Request - submit information to confirm gas cap compliance.

In response to the PUC's demand, the parties took the necessary action to put Protective Order No. 05-PO-12 in place to specifically cover the anticipated information to ensure gas cap compliance sought by the Request for Interim Reporting. A plain reading of the document supports this view:

First, Shell notes that the caption of Protective Order No. 05-PO-12 specifies that the order is being made pursuant to the Request for Interim Reporting dated September 12, 2005.

Second, paragraph 1 of Protective Order No. 05-PO-12 specifically notes that the order only covers information requested by the PUC pursuant to the PUC's authority set forth in HRS § 486H-13(m):

TERMS OF THE ORDER

1. This protective order governs the classification, acquisition, and use of Confidential Information produced by the Party pursuant to HRS Section 486H-13(m). The execution of this stipulation shall not be deemed to be a waiver of any legal rights or

privileges, or of the right to contest the disclosure of any of the information requested.

See Protective Order No. 05-PO-12 ¶ 6, p. 6.

Third, Shell notes that there is no provision in this Order indicating that it also covers information requested pursuant to HRS Chapters 486J and 125C. The provisions in Protective Order No. 05-PO-12 covering the use of the confidential information submitted states:

USE OF CONFIDENTIAL INFORMATION

15. Any Confidential Information obtained under this protective order shall be used solely in connection with the purposes set forth in this Request for Interim Reporting dated September 12, 2005 proceeding and HRS Chapters 486H and 486J, as amended, and shall not be used for any other purpose, including business, governmental or commercial purposes, or in any other administrative or judicial proceeding, except as provided in paragraphs 16 and 17, and except as may be directed by (a) an order of court or (b) an order of the Commission.

16. Any confidential information obtained under this protective order may be used by the Commission and its staff and counsel in this Request for Interim Reporting dated September 12, 2005 proceeding pending before the Commission involving the producing party, where the intended use of such confidential information is for the purpose of assisting the Commission in fulfilling its statutory duties and responsibilities under HRS Chapters 486H and 486J, as amended. The confidential information shall continue to be treated as confidential until the protection conferred by this protective order (or any other applicable protective order) is terminated by the producing party, or until further order of the Commission.

17. Any confidential information obtained under this protective order may be used by the Consumer Advocate, its staff, its consultant and its counsel in this Request for Interim Reporting dated September 12, 2005 proceeding pending before the Commission involving the producing party, where the intended use of such confidential information is for the purpose of assisting the Consumer Advocate in fulfilling its statutory duties and responsibilities under Chapters 486J and 486H, as amended. The

confidential information shall continue to be treated as confidential until the protection conferred by this protective order (or any other applicable protective order) is terminated by the producing party, or until further order of the Commission.

See Protective Order No. 05-PO-12 at ¶¶ 15-17, pp. 13-14.

Shell acknowledges that the PUC and the Consumer Advocate have dual duties under HRS Chapters 486H and 486J. Further pursuant to ¶¶ 1, 15, 16, and 17 of Protective Order No. 05-PO-12, Shell acknowledges that that this Order authorizes the PUC and the Consumer Advocate to use the confidential information *obtained pursuant to the September 12, 2005 Request for Interim Reporting*, for the purpose of assisting the *PUC and the Consumer Advocate* in fulfilling their statutory duties and responsibilities under Chapters 486J and 486H.

Shell also does not disagree with PUC Chief Counsel's December 19, 2005 letter wherein she advised that Protective Order No. 05-PO-12 authorizes "the Commission to provide DBEDT with Level Two Confidential Information so long as DBEDT employees have executed Exhibit A of the protective order." See PUC Chief Counsel's letter dated December 19, 2005, a copy of which is attached hereto as Exhibit C.

However, Shell believes that December 20th Information Request poses a different issue, insofar as said request is being made directly by DBEDT, the Petroleum Commissioner, and/or the PUC pursuant to statutory authorities *other than* HRS § 486H-13(m). In view of paragraphs 1 and 15-17 of the protective order cited above, Shell believes that Protective Order No. 05-PO-12 would not cover its submissions to DBEDT, the Petroleum Commissioner, and/or the PUC under statutory authorities *other than* HRS § 486H-13(m).

Shell believes that it is important to remember that at the time of having to draft Protective Order No. 05-PO-12 in September of 2005, the only request before the parties was the PUC's September 12, 2005 Request for Interim Reporting made under HRS § 486H-13(m) for information to confirm gas cap compliance. Indeed, at that time, DBEDT, the Petroleum Commissioners, and the PUC had not finalized the form of their information requests under HRS Chapters 486J and 125C. It is for this reason that Shell agreed to the limited form of the protective order which only addresses the PUC's Request for Interim Reporting on gas cap compliance – as it was the only request presented to the parties.

At that time, from Shell's perspective, it would have been premature to seek to craft a protective order to cover information requests anticipated to be made under HRS Chapters 486J and 125C when it did not even know what the requests would specifically ask for. Shell's position at that time was that once it did receive DBEDT/Petroleum Commissioner/PUC's information request made under HRS Chapters 486H and 125C, it would then be appropriate to

make an assessment as to what additional protections would be necessary to protect the confidentiality of the information submitted in response to those requests.³

In summary, Shell believes that while Protective Order No. 05-PO-12 authorizes the PUC to obtain gas cap compliance information requested under HRS § 486H-13(m), use that information in furtherance of fulfilling the PUC's dual statutory duties and responsibilities under HRS Chapters 486H and 486J, and share that information with DBEDT and the Petroleum Commissioners in their capacities as qualified persons under the protective order, it does not specifically authorize DBEDT and the Petroleum Commissioner to independently request and use said information for their purposes. *See* Protective Order No. 05-PO-12 at ¶ 15, p. 13-14 (prohibiting the use of the confidential information for any purpose, including a "governmental purpose" other than assisting the PUC and the Consumer Advocate in fulfilling their duties and responsibilities under HRS Chapters 486H and 486J). Thus, Shell has a current concern that the current form of Protective Order No. 05-PO-12 does not cover information directly requested by DBEDT/Petroleum Commissioner/PUC pursuant to authority *other than* HRS § 486H-13(m) and does not allow information covered by Protective Order No. 05-PO-12 to be used by DBEDT and the Petroleum Commissioner to fulfill statutory duties and responsibilities under HRS Chapters 486J and 125C,.

B. Proposed Modification to Protective Order No. 05-PO-12

While Shell appreciates the PUC's proposal to solve this issue by authorizing Shell to "treat the information request as joint or several from each of the individual Agencies as may be required or appropriate to compel the submission of requested information as required by law," (PUC February 17, 2006 letter at p. 6), Shell believes that a simple modification to Protective Order No. 05-PO-12 would cure Shell's concern on this issue.

Accordingly, Shell respectfully proposes that the following modifications be made to the current form of Protective Order No. 05-PO-12. As to paragraph 1, Shell proposes to add the language underlined below:

1. This protective order governs the classification, acquisition, and use of Confidential Information produced by the Party pursuant to HRS Section 486H-13(m), HRS Chapter 486J, and HRS Chapter 125C. The execution of this stipulation shall not be deemed to be a waiver of any legal rights or privileges, or of the right to contest the disclosure of any of the information requested.

Shell also proposes adding a paragraph 17A which reads:

³ Consistent with this position, once Shell did receive the December 20th Information Request, it timely submitted the January 13th request for clarification on the form of said request.

17A. Any confidential information obtained under this protective order may be used by the Department of Business, Economic Development and Tourism and the petroleum commissioner, their staff, counsel (including employees directly employed by such counsel), and any consultants retained by the Department of Business, Economic Development and Tourism, as qualified persons under this protective order, where the intended use of such confidential information is for the purpose of assisting said qualified persons in fulfilling their statutory duties and responsibilities under Chapters 486J and 125C, as amended. The confidential information shall continue to be treated as confidential until the protection conferred by this protective order (or any other applicable protective order) is terminated by the producing party, or until further order of the Commission.

Shell notes that should the above-referenced modifications be authorized, all protective agreements previously executed and filed with the PUC would also have to be modified to acknowledge that these modifications to the Order apply to the protective agreements as well.

As set forth above, Shell greatly appreciates the PUC's approach in seeking to streamline the various requests for information that have been made by the different agencies, and we emphasize that Shell stands ready and willing to cooperate and comply with all requests made herein. Shell respectfully requests that the PUC consider authorizing the above-referenced changes to Protective Order No. 05-PO-12 to allow Shell to timely comply with the reporting requirements described and contained in the December 20th Letter Request by March 20, 2006.

With regard to the March 20, 2006 deadline, Shell is confident that it will be able to provide all requested data reports regarding gasoline transactions by March 20, 2006. Shell will use its best efforts to have the other requested data reports (regarding commercial data regarding diesel, aviation gasoline, kerosene-type Jet Fuel, propane, residential fuel oil, etc.) available by March 20, 2006, but reserves its right to ask for a short extension on the commercial data portion of the request, should it become necessary.

The Honorable Carlito P. Caliboso
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Shell sincerely appreciates the opportunity to present its position to this honorable commission and stands ready to cooperate and assist in this matter as required by the PUC.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Bruce Nakamura', with a long horizontal flourish extending to the right.

BRUCE NAKAMURA
KENNETH M. NAKASONE
for
KOBAYASHI, SUGITA & GODA

cc: Nichole K. Shimamoto, Esq., Commission Counsel
Theodore E. Lieu, Director DBEDT
Maurice H. Kaya, Director, Strategic Industries Division, DBEDT
Jon Itomura, Esq. (CA Counsel)
Craig Nakanishi, Esq. (Tesoro Counsel)
Michael Lau, Esq. (Chevron Counsel)

Exhibit A

In the Matter of the
Public Utilities Commission
Request for Interim Reporting dated
September 12, 2005.

OCT 17 2005

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the)
)
Public Utilities Commission)
)
Request for Interim Reporting dated)
September 12, 2005.)
)
)
_____)

STIPULATION FOR PROTECTIVE ORDER

WHEREAS, under Hawaii Revised Statutes ("HRS") Section 486H-13(m), the Public Utilities Commission ("Commission") may determine the extent to which a manufacturer, wholesaler, or jobber is complying with any requirement imposed or rule adopted under that section, including the ability to compel a manufacturer, wholesaler, or jobber to submit documents, data, and information necessary and appropriate for the Commission to determine such compliance;

WHEREAS, under HRS Section 486H-13(m), the Commission may use data collected by the Department of Business, Economic Development, and Tourism ("DBEDT") pursuant to HRS Chapter 486J, as well as obtain the assistance of that department in determining such compliance;

WHEREAS, under HRS Chapter 486J, the petroleum commissioner, as defined in HRS Section 486J-1, may obtain certain data and information from a Hawaii distributor, major marketer, oil producer, oil storer, oil transporter or refiner;

WHEREAS, under HRS Section 486J-6(a), confidential commercial information presented to the petroleum commissioner pursuant to HRS Chapter 486J shall be held in confidence by the petroleum commissioner or aggregated to the extent necessary to assure confidentiality as governed by HRS Chapter 92F, including its penalty provisions;

WHEREAS, under HRS Section 486J-6(b), no data or information submitted to the petroleum commissioner shall be deemed confidential if the person submitting the information or data has made it public;

WHEREAS, under HRS Section 486J-6(c), unless otherwise provided by law, with respect to data provided pursuant to HRS Sections 486J-3 and 486J-4, neither the petroleum commissioner, nor any employee of the DBEDT, may do any of the following: (1) use the information furnished under HRS Sections 486J-3 and 486J-4 for any purpose other than the statistical purposes for which it is supplied; (2) make any publication whereby the data furnished by any particular establishment or individual under HRS Sections 486J-3 and 486J-4 can be identified; or (3) permit anyone to examine the individual reports provided under HRS Sections 486J-3 and 486J-4 other than the Commission, the Attorney General, and the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs (the "Consumer Advocate"), and the authorized representatives and employees of each;

WHEREAS, under HRS Section 486J-7, any confidential information pertinent to the responsibilities of the petroleum commissioner specified in HRS Chapter 486J that is obtained by another state agency, including the department of taxation, the Commission, the Attorney General, and the Consumer Advocate, shall be made

available to the Attorney General, the Attorney General's authorized representatives, and the petroleum commissioner and shall be treated in a confidential manner;

WHEREAS, under HRS Section 486J-8, the petroleum commissioner shall make all information obtained by the petroleum commissioner under HRS Chapter 486J, including confidential information, available to the Attorney General, the department of taxation, the Commission, the Consumer Advocate, and the authorized representative of each, who shall safeguard the confidentiality of all confidential information received;

WHEREAS, by letter dated September 7, 2005, petroleum manufacturers (refiners), wholesalers, and jobbers doing business in the State of Hawaii were notified that the Commission, DBEDT, and the petroleum commissioner were immediately establishing mandatory petroleum market data and information reporting requirements for compliance by all petroleum manufacturers (refiners), wholesalers, and jobbers doing business in the State of Hawaii;

WHEREAS, by letter dated September 7, 2005, the Commission, DBEDT, and the petroleum commissioner stated that they intend to be as reasonable as possible to make these reporting requirements as efficient and effective as possible; will require only data and information deemed essential to monitor and analyze matters relevant to the implementation of wholesale gasoline price caps; and is also intended to avoid duplicate reporting by the industry;

WHEREAS, by letter dated September 12, 2005, as an interim measure only, prior to the availability of reporting forms, the Commission requested that all manufacturers, wholesalers, and jobbers submit documentation that includes the following information for every wholesale sale that has been made since September 1,

2005: (1) Date of wholesale sale; (2) Purchaser; (3) Volume of gasoline sold; (4) Any and all charges included in the transaction; (5) Total transaction amount; (6) Grade of gasoline; (7) Price per gallon (pre-tax); and (8) Zone in which the transaction took place;

WHEREAS, by letter dated September 19, 2005, the Commission clarified its September 12, 2005 letter to also request the following information for every wholesale purchase that has been made since September 1, 2005: (1) Date of wholesale purchase; (2) Seller; (3) Volume of gasoline purchased; (4) Any and all charges included in the transaction; (5) Total transaction amount; (6) Grade of gasoline; (7) Price per gallon (pre-tax); and (8) Zone in which the transaction took place;

WHEREAS, Chevron U.S.A. Inc. ("Chevron"), Tesoro Hawaii Corporation ("Tesoro"), Shell Oil Company ("Shell"), and members of Hawaii Petroleum Marketers Association ("HPMA") are manufacturers, wholesalers, or jobbers addressed by the Commission's requests for information contained in the letters dated September 12 and 19, 2005, and by administrative rule, the Consumer Advocate is a party to this proceeding (Chevron, Tesoro, Shell, HPMA, and the Division of Consumer Advocacy ("Consumer Advocate") shall be hereafter collectively referred to as "Parties" and individually referred to as a "Party");

WHEREAS, under HRS Section 486H-13(m), except for the Consumer Advocate, the Parties are required to submit documents, data, and information necessary and appropriate for the Commission to determine such compliance with HRS Chapter 486H;

WHEREAS, Chevron, Tesoro, Shell, and HPMA anticipate that certain information that may be requested by the Commission or filed with the Commission

during the course of this proceeding will be considered confidential, business sensitive, trade secrets and/or proprietary by the Party submitting the information, the disclosure of which could, without limitation, (1) disadvantage that Party in that disclosure of certain information may touch upon that Party's respective company, customer and/or employee privacy concerns, (2) violate certain laws, regulations, and guidelines, (3) violate the terms and conditions of non-disclosure agreements with consultants or other third parties, (4) directly or indirectly give another Party or persons not a party to these proceedings information which the Party or person could use to its competitive advantage and/or to the competitive disadvantage of the submitting Party, (5) jeopardize or otherwise subject to risk the safety of the personnel, plants, equipment, operations or general activities of the submitting Party, or (6) otherwise be used to the detriment of the interests of the submitting Party;

WHEREAS, the Parties desire to establish a set of procedures and provisions pertaining to the use and disclosure of information considered to be confidential, business sensitive, trade secrets, and/or proprietary and any information which any Party may in the future contend to be confidential, business sensitive, trade secrets and/or proprietary (hereinafter individually and collectively "Confidential Information");

WHEREAS, although the Commission's letter of September 12, 2005, provides that the information requests in this proceeding is an interim measure only, the Commission is requesting documentation on an ongoing monthly basis and the Parties desire to protect all Confidential Information that is produced throughout the course of this proceeding and thereafter pursuant to terms set forth below;

WHEREAS, the Parties understand that during the course of any hearing pertaining to this matter, if any, if it becomes necessary to address any information provided pursuant to this protective order during the course of the hearing, if required, that portion of the proceeding will be heard in camera limited to the Party providing the Confidential Information, the Commission and the Consumer Advocate; and

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, in accordance with Section 6-61-50 of the Rules of Practice and Procedure before the Public Utilities Commission ("Commission's Rules"), that the Commission issue a protective order covering the Confidential Information identified in the course of the proceeding as follows:

TERMS OF THE ORDER

1. This protective order governs the classification, acquisition, and use of Confidential Information produced by the Party pursuant to HRS Section 486H-13(m). The execution of this stipulation shall not be deemed to be a waiver of any legal rights or privileges, or of the right to contest the disclosure of any of the information requested.

2. Except as otherwise provided below, any person obtaining Confidential Information in this proceeding or obtaining Confidential Information, directly or indirectly from someone under circumstances in which the ultimate source of the information was this proceeding shall be subject to this protective order.

APPLICATION OF THE UNIFORM INFORMATION PRACTICES ACT

3. To the extent that any of the documents covered by this protective order consist of "government records," as defined in HRS Section 92F-3, the provisions of HRS Chapter 92F ("Uniform Information Practices Act" or "UIPA") shall apply to the disclosure of information contained in such documents except where, pursuant to HRS Section 92F-13: (1) the Confidential information, if disclosed, would constitute a clearly unwarranted invasion of personal privacy; (2) the Confidential information pertains to the prosecution or defense of any judicial or quasi-judicial action to which the State or any county is or may be a party, to the extent that such records would not be discoverable; (3) the Confidential Information, by their nature, must be confidential in order for the Commission to avoid the frustration of a legitimate government function; or (4) the Confidential Information, pursuant to state or federal law including an order of any state or federal court, are protected from disclosure. In addition to other applicable exceptions to disclosure under the UIPA, (1) the Confidential Information, by their nature, must be confidential in order for the Commission to avoid the frustration of a legitimate government function; and (2) the Confidential Information is protected from disclosure by Section 6-61-50 of the Commission's Rules, HRS Chapter 486J, and applicable state or federal law. In the event any provision of this protective order conflicts with any provision of the UIPA, the UIPA shall control.

CLASSIFICATION

4. A Party may designate as confidential any information it believes, in good faith, contains Confidential Information. Such information shall be protected against

disclosure to a non-qualified person pursuant to the terms of this protective order, unless such information is declassified, or permission to disclose the information to such non-qualified person is granted by the Party claiming confidentiality, as provided in paragraph 13 below. In addition, a Party may designate certain information (including information that the Party would not normally disclose to competitors, customers, or suppliers) as being confidential and not to be distributed to other Parties (not including the Consumer Advocate) by notifying the Commission and the Consumer Advocate in writing setting forth in particularity the information to be kept as confidential and not available to the other Parties (hereinafter referred to as the "Level Two Confidential Information"). With respect to such Level Two Confidential Information, (a) the Parties from whom such information is being withheld shall be treated as a non-qualified person from whom such information shall be protected against disclosure in accordance with the terms of this protective order and (b) except as limited in subpart (a) above, in all other respects, the Level Two Confidential Information shall be treated in the same manner as all other Confidential Information. In addition to other designations in this protective order, the Party submitting any Level Two Confidential Information or any other Confidential Information that is not to be distributed to other Parties shall place upon the applicable material the following legend:

**"CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER
TO BE VIEWED ONLY BY THE
PUBLIC UTILITIES COMMISSION
OR THE CONSUMER ADVOCATE"**

5. If a Party designates information as confidential, it shall produce the Confidential Information in accordance with the procedures described in paragraphs 11

through 14 below, and concurrently provide that Confidential Information in writing to the Commission and the Consumer Advocate. The Party seeking to designate Confidential Information shall: (1) identify the information's source, character, and location to the extent reasonably practicable, (2) state the basis for the claim of confidentiality, and (3) describe the harm or prejudice to the producing Party from any misuse or unauthorized disclosure of the information. If the Commission or any Party challenges the claim of confidentiality of the information, the Party claiming confidentiality shall bear the burden of proof in supporting its claim of confidentiality, and the Commission will determine whether the information is confidential and whether it should be disclosed under the terms of this protective order. Any challenge to the confidentiality of any information shall be made in accordance with paragraph 24 below.

6. Confidential Information provided to the Commission or a Party, orally or in any other form, shall be protected as fully as Confidential Information provided in written form. A Party shall notify the Commission and the other Parties when information provided orally or in other than written form includes Confidential Information. At the time of such notification, a Party shall, in the manner provided in paragraph 5 above, specify the subject-matter of such Confidential Information, the basis for the claim of confidentiality, and the harm or prejudice to the producing Party from any misuse or unauthorized disclosure of the information.

FORMS OF CONFIDENTIAL INFORMATION

7. All information claimed to be Confidential Information shall be subject to the terms of this protective order, and shall be treated by all qualified persons (as

defined in paragraph 12 below) as constituting Confidential Information. Any notes, summaries, abstracts, or analyses that are prepared by counsel, experts, or other qualified persons, and that reflect any of the underlying Confidential Information, shall also be subject to the terms of this protective order.

DESIGNATION

8. Any Party claiming that information is confidential shall place upon the applicable material the following legend:

**“CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER”**

Whenever only a portion of a document, transcript, or other material is deemed to contain Confidential Information, the Party shall, to the extent reasonably practicable, limit the claim of confidentiality to only such portion. However, if such limitation is not reasonably practicable, the entire document, transcript, or other material may be designated as Confidential Information.

9. With respect to any Confidential Information that is not under the physical control of the Party claiming the information is confidential, other persons shall, to the extent requested by that Party, cooperate to ensure that all copies of such Confidential Information bear the legend required in paragraph 8 above.

10. Any Party may request the Commission to designate as Confidential Information any document or other information previously produced but not designated as confidential, provided that the Party, in the manner provided in paragraph 5 above, specify the subject-matter of such Confidential Information, the basis for the claim of confidentiality, and the harm or prejudice to the producing Party from any misuse or

unauthorized disclosure of the information. In addition, the Party claiming confidentiality shall replace the previously-produced but not designated as confidential material with the identical material under designation as required in paragraph 8 above.

DISCLOSURE

11. Except as provided in paragraph 13 below, Confidential Information shall not be made available or disclosed to any person who is not a "qualified person" as defined in paragraph 12 below.

12. Subject to the condition provided in paragraph 4 above, limiting the availability of Level Two Confidential Information, "qualified person" or "qualified persons", as used in this protective order means any one of the following:

- a. The author(s), addressee(s), or originator(s) of the Confidential Information, including its counsel or representative of record;
- b. The Commission, its staff, counsel (including employees directly employed by such counsel), and any consultants retained by the Commission;
- c. The Consumer Advocate, its staff, counsel (including employees directly employed by such counsel), and any consultants retained by the Consumer Advocate for purposes of this proceeding;
- d. The Department of Business, Economic Development and Tourism and the petroleum commissioner, their staff, counsel (including employees directly employed by such counsel), and any

consultants retained by the Department of Business, Economic Development and Tourism;

- e. The Department of Taxation, its staff, counsel (including employees directly employed by such counsel), and any consultants retained by the Department of Taxation;
- f. The Department of the Attorney General, its staff, counsel, outside counsel (including employees directly employed by such counsel), and any consultants retained by the Department of the Attorney General;
- g. Subject to paragraph 4 above, the Parties (which shall include their respective officers, employees, counsel (including employees directly employed by such counsel), and any consultants retained by such Party for purposes of this proceeding); and
- h. Any other person approved by the Party asserting the claim of confidentiality;
- i. Any other person designated as a qualified person by order of the Commission.

13. When a qualified person wishes to disclose Confidential Information to a non-qualified person, the qualified person must request permission from the Party claiming confidentiality. The request shall identify the non-qualified person to whom disclosure is desired; disclose any past, present, or anticipated affiliation between the qualified person and the non-qualified person; specify the exact information to be disclosed; and state the reasons for the requested disclosure. If permission is granted

by the Party claiming confidentiality, disclosure of the Confidential Information shall be made to such non-qualified person in the same manner as provided for qualified persons in paragraph 14 below. In the event that Confidential Information is for any reason produced or disclosed to a non-qualified person without the permission of the Party claiming confidentiality, all Parties shall have the right to recall Confidential Information from all qualified persons or holders of such information and to take all steps deemed necessary by the Party or Parties to protect the Confidential Information from production or disclosure. Such qualified persons or holders shall retrieve all Confidential Information from all recipients and return the Confidential Information to the Party claiming confidentiality.

PROCEDURE FOR OBTAINING ACCESS

14. Prior to disclosing Confidential Information to a qualified person other than the Commission and its staff, the qualified person shall read a copy of this protective order, complete a copy of the protective agreement attached as Exhibit A to this protective order, sign the completed copy of the protective agreement, and deliver the executed protective agreement to the Party claiming confidentiality and to the Commission.

USE OF CONFIDENTIAL INFORMATION

15. Any Confidential Information obtained under this protective order shall be used solely in connection with the purposes set forth in this Request for Interim Reporting dated September 12, 2005 proceeding and HRS Chapters 486H and 486J,

as amended, and shall not be used for any other purpose, including business, governmental or commercial purposes, or in any other administrative or judicial proceeding, except as provided in paragraphs 16 and 17, and except as may be directed by (a) an order of court or (b) an order of the Commission.

16. Any confidential information obtained under this protective order may be used by the Commission and its staff and counsel in this Request for Interim Reporting dated September 12, 2005 proceeding pending before the Commission involving the producing party, where the intended use of such confidential information is for the purpose of assisting the Commission in fulfilling its statutory duties and responsibilities under HRS Chapters 486H and 486J, as amended. The confidential information shall continue to be treated as confidential until the protection conferred by this protective order (or any other applicable protective order) is terminated by the producing party, or until further order of the Commission.

17. Any confidential information obtained under this protective order may be used by the Consumer Advocate, its staff, its consultant and its counsel in this Request for Interim Reporting dated September 12, 2005 proceeding pending before the Commission involving the producing party, where the intended use of such confidential information is for the purpose of assisting the Consumer Advocate in fulfilling its statutory duties and responsibilities under Chapters 486J and 486H, as amended. The confidential information shall continue to be treated as confidential until the protection conferred by this protective order (or any other applicable protective order) is terminated by the producing party, or until further order of the Commission.

18. Unless otherwise ordered by the Commission, if a Party desires to file written testimony, exhibits or pleadings which contain or reflect the Confidential Information, only the page(s) containing or reflecting such information shall be treated as confidential, and that part of any hearing, if any, at which such information is discussed shall be held in camera, or under other conditions set by the Commission to prevent unnecessary public disclosure of such information. A copy of any confidential page(s), with any such information deleted, shall be filed to be included in the public record, and each such page shall contain the following designation in the upper left hand corner:

**“Confidential Information Deleted Pursuant to
Protective Order No. _____.”**

RETENTION OF CONFIDENTIAL INFORMATION

19. Confidential Information shall be retained in a locked cabinet dedicated to the storage of Confidential Information, or otherwise secured to ensure that access to and disclosure of the Confidential Information is limited to a qualified person.

20. Confidential Information that is given to or filed with the Commission or its staff shall be separately bound and placed in a sealed envelope or other appropriate sealed container on which shall appear the following legend:

**“THIS ENVELOPE IS SEALED PURSUANT TO
PROTECTIVE ORDER NO. _____ AND CONTAINS
DOCUMENTS WITH CONFIDENTIAL INFORMATION. IT
IS NOT TO BE OPENED OR THE CONTENTS OF THIS
ENVELOPE DISPLAYED OR REVEALED EXCEPT TO
QUALIFIED PERSONS AUTHORIZED TO INSPECT THE
ENCLOSED DOCUMENTS.”**

If the Confidential Information is not to be distributed to another Party or Parties the sealed envelope or other appropriate sealed container shall have the following legend instead of the preceding legend:

**“PUBLIC UTILITIES COMMISSION OR CONSUMER
ADVOCATE USE ONLY. THIS ENVELOPE IS SEALED
PURSUANT TO PROTECTIVE ORDER NO. AND
CONTAINS DOCUMENTS WITH CONFIDENTIAL
INFORMATION. IT IS NOT TO BE OPENED OR THE
CONTENTS OF THIS ENVELOPE DISPLAYED OR
REVEALED EXCEPT TO THE PUBLIC UTILITIES
COMMISSION OR THE CONSUMER ADVOCATE”**

21. Confidential Information shall not be reproduced or duplicated, except to make working copies and copies to be filed with the Commission under seal. If a document contains information so sensitive that it should not be copied by anyone, the Party claiming confidentiality shall have the following legend placed on each page of the document:

“Copying Prohibited”.

22. If a court or other administrative agency requests, subpoenas, or orders production of Confidential Information that a Party or person has obtained under this protective order from another Party, that Party or person shall immediately notify the Party claiming confidentiality of the request, subpoena or order, and not produce that information until the Party claiming confidentiality has had a reasonable opportunity to seek a court order or take such other action as it deems necessary to preclude production of its Confidential Information pursuant to the request, subpoena or order. Any Party which produces the Confidential Information of another Party in violation of this Section 22 shall be liable to that Party to the extent permitted by law for all damages caused by that production.

DURATION OF CONFIDENTIALITY

23. The confidentiality of the information produced pursuant to this protective order shall be preserved until all interested parties, by written stipulation, waive the protection conferred by this protective order.

APPEAL TO THE COMMISSION

24. If any Party disagrees with the designation of information as confidential, the Party claiming confidentiality and the Party so disagreeing shall first make a good faith attempt to resolve the dispute on an informal basis. If the dispute cannot be resolved, the Party contesting the confidentiality of the information shall file a motion to compel disclosure or any other appropriate motion with the Commission. The Party claiming confidentiality shall bear the burden of proof in supporting its claim, and the Commission will determine whether the information shall continue to be designated as confidential under this protective order. The motion shall identify the contested information and the specific reasons the information should not be classified as confidential. Pending a disposition of the motion, the information in question shall continue to be treated as Confidential Information and shall not be disclosed except as permitted in this protective order.

NON-WAIVER OF OBJECTIONS AND RIGHTS

25. The Parties retain the right to contest any assertion or finding of confidentiality or of non-confidentiality. The Parties retain the right to question,

challenge, and object to the admissibility or submission of Confidential Information on the ground of relevancy or materiality.

26. Notwithstanding anything to the contrary, nothing in this Stipulation for Protective Order creates any obligation to disclose or exchange any Confidential Information.

MODIFICATION OF THE PROTECTIVE ORDER

27. The Commission may upon good cause modify this protective order on the motion of any Party, or on its own motion, upon reasonable notice to the Parties and an opportunity for hearing.

DISPOSAL OF CONFIDENTIAL INFORMATION

28. Except as provided in paragraphs 29 and 30 below, within 90 days after the conclusion of this proceeding or when the Commission determines the Confidential Information is no longer required for purposes of this proceeding, whichever is earlier, persons in possession of Confidential Information shall, at the option of the Party producing the Confidential Information, return or destroy all such materials and all copies, notes, tapes, papers, or other medium containing, summarizing, excerpting, or otherwise embodying any Confidential Information. If the Party producing the Confidential Information requests destruction, the person destroying the information shall certify its destruction to the producing Party, indicating the name of the person destroying the Confidential Information, the method of destruction, when the

Confidential Information was destroyed, and the identity of the specific materials, copies, notes, tapes, etc. containing Confidential Information that has been destroyed.

29. Counsel and the representative of record for a Party shall be entitled to retain memoranda, pleadings, exhibits of record, written testimony, and transcripts embodying information derived from or incorporating Confidential Information properly made available to such Counsel and the representative of record for a Party to the extent reasonably necessary to preserve files on this proceeding. Those files shall not be disclosed to any person, entity, government agency or anyone else who is not a qualified person.

30. Confidential Information produced in this proceeding shall remain in the possession of the Commission, the Consumer Advocate and counsel for the Consumer Advocate for the duration provided by applicable statutory authority.

SANCTIONS

31. Any person violating this protective order shall be subject to sanctions imposed by the Commission.

32. Any person or holder of information which produces or discloses information that has been designated as Confidential Information by a Party in a manner inconsistent with the provisions set forth herein (including without limitation the intent of the provisions), shall be subject to applicable sanction and shall be liable to that Party whose Confidential Information has been produced or disclosed to the extent permitted by law for all damages caused by that production or disclosure.

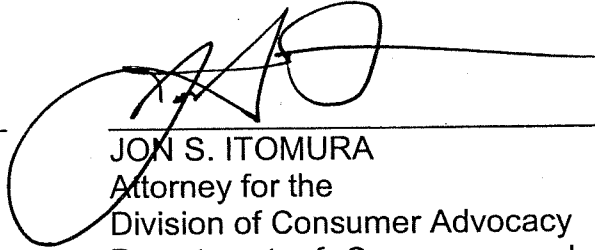
COUNTERPARTS

33. This Stipulation for Protective Order may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.


DATED: Honolulu, Hawai'i, October 13, 2005.



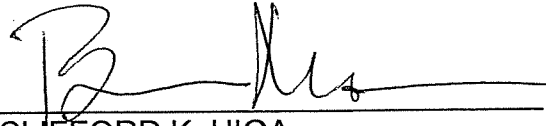
MICHAEL H. LAU
KENT D. MORIHARA
Ishikawa Morihara Lau & Fong LLP
Attorneys for Chevron U.S.A. Inc.



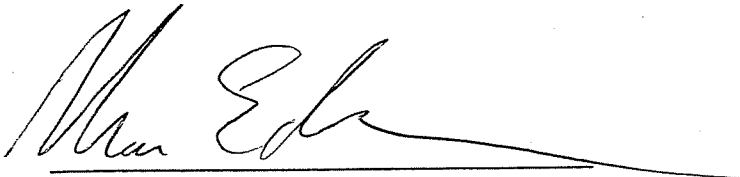
JON S. ITOMURA
Attorney for the
Division of Consumer Advocacy
Department of Commerce and Consumer
Affairs



CRAIG I. NAKAMISHI
SHAH J. BENTO
Rush Moore LLP
Attorneys for Tesoro Hawaii Corporation




CLIFFORD K. HIGA
BRUCE NAKAMURA
KENNETH M. NAKASONE
Kobayashi, Sugita & Goda
Attorneys for Shell Oil Company



KELLY G. LAPORTE
MARC E. ROUSSEAU
Cades Schutte LLP
Attorneys for Hawaii Petroleum Marketers
Association

APPROVED AND SO ORDERED THIS October 14, 2005,
at Honolulu, Hawaii.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

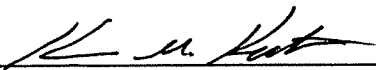

Kevin M. Katsura
Commission Counsel

EXHIBIT A

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

PROTECTIVE AGREEMENT

1. I, _____, have been presented with a copy of Protective Order No. _____ issued by the Hawaii Public Utilities Commission in the Request for Interim Reporting dated September 12, 2005 proceeding on the _____ day of _____, 2005 ("Protective Order").

2. I am employed, retained or assisting _____ in the Request for Interim Reporting dated September 12, 2005 proceeding and have requested review of the Confidential Information covered by the Protective Order.

3. I understand the Confidential Information covered by the Protective Order is to be used solely on behalf of _____, for purposes of this Request for Interim Reporting dated September 12, 2005 proceeding and HRS Chapters 486H and 486J, as amended, and that unless otherwise permitted by the Protective Order, I am to make no other use of the Confidential Information, nor am I to disclose the Confidential Information to any other person, entity, government agency or anyone else.

4. I further understand that at the conclusion of my status as a qualified person as defined in Protective Order No. _____ in Request for Interim Reporting dated September 12, 2005 proceeding, I shall account for each copy, extract, note and summary of, or other document containing any part of such Confidential Information, to the Party claiming confidentiality and I shall abide by the provisions in paragraph 28 of the Protective Order, unless otherwise permitted by paragraphs 29 and 30 of the Protective Order.

5. I hereby certify that I have read the above-mentioned Protective Order and agree to abide by its terms and conditions.

DATED at _____, _____, this _____, 2005.

Signature

Address

(_____) _____
Telephone Number

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Protective Order No. 05-P0-12, upon the following party (parties) by hand delivery or by mail, postage prepaid and properly addressed.

DIVISION OF CONSUMER ADVOCACY
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
P. O. Box 541
Honolulu, Hawaii 96809

JON S. ITOMURA, ESQ.
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
P. O. Box 541
Honolulu, Hawaii 96809

ALBERT CHEE, SR.
CHEVRON U.S.A. INC.
91-849 Malakole St.
Kapolei, Hawaii 96707

MICHAEL H. LAU, ESQ.
KENT D. MORIHARA, ESQ.
ISHIKAWA MORIHARA LAU & FONG LLP
841 Bishop Street, Suite 400
Honolulu, Hawaii 96813

WILLIAM S. HUNT
ALSTON HUNT FLOYD & ING
American Savings Bank Tower
1001 Bishop Street, Floor 18
Honolulu, Hawaii 96813

TESORO HAWAII CORPORATION
Attn: Leslee Ellenson
91-325 Komohana St.
Kapolei, Hawaii 96707-1713

CRAIG I. NAKANISHI, ESQ.
SHAH J. BENTO, ESQ.
RUSH MOORE LLP
737 Bishop St., Suite 2400
Honolulu, HI 96813

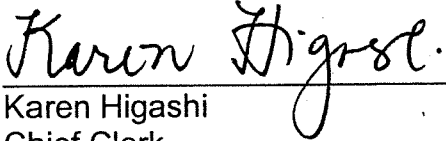
DANNY BATCHELOR
SENIOR COUNSEL
SHELL OIL COMPANY
P. O. Box 2463
Houston, TX 77252-2463

CLIFFORD K. HIGA, ESQ.
BRUCE NAKAMURA, ESQ.
KENNETH M. NAKASONE, ESQ.
KOBAYASHI, SUGITA & GODA
First Hawaiian Center
999 Bishop St., Suite 2600
Honolulu, HI 96813

HAWAII PETROLEUM MARKETERS ASSOCIATION
c/o ROBERT W. FUNG, PRESIDENT
P. O. Box 500
Honolulu, HI 96809

KELLY G. LAPORTE, ESQ.
MARC E. ROUSSEAU, ESQ.
CADES SCHUTTE LLP
1000 Bishop St., Suite 1200
Honolulu, Hawaii 96813

Dated: October 14, 2005



Karen Higashi
Chief Clerk

Exhibit B

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
465 S. KING STREET, #103
HONOLULU, HAWAII 96813

CARLITO P. CALIBOSO
CHAIRMAN

WAYNE H. KIMURA
COMMISSIONER

JANET E. KAWELO
COMMISSIONER

September 12, 2005

Shell Oil Corporation
789 N. Nimitz Highway
Honolulu, Hawaii 96717

Re: Public Utilities Commission's Interim Reporting Requirements

Dear Shell Oil Corporation:

By letter dated September 7, 2005, you were notified by the Public Utilities Commission ("Commission"), Department of Business, Economic Development & Tourism ("DBEDT"), and the State Petroleum Commissioner ("SPC") that all manufacturers, wholesalers and jobbers will be required to submit specific petroleum market data on prescribed reporting forms. The letter also indicated that you will receive the reporting forms, instructions, and other necessary information as soon as possible.

As an interim measure only, prior to the availability of the reporting forms, the Commission requests that your company – as well as all other manufacturers, wholesalers and jobbers – submit to the Commission documentation that clearly demonstrates it has been complying with the gas price caps that have been set since the Gas Price Caps Law became effective on September 1, 2005. Please provide documentation that includes the following information for every wholesale sale your company has made since September 1, 2005:

- Date of wholesale sale;
- Purchaser;
- Volume of gasoline sold;
- Any and all charges included in the transaction;
- Total transaction amount;
- Grade of gasoline;
- Price per gallon (pre-tax);
- Zone³¹ in which the transaction took place.

³¹As defined in HRS § 486H-13(h).

EXHIBIT



The Commission seeks your cooperation in providing the above information on a weekly basis. The first submission, which is due on September 19, 2005, shall include required data for the period September 1, 2005 through September 11, 2005. Thereafter, the reporting period shall be every seven (7) days, Monday through Sunday, and the submission due date is the second Monday following the end of the reporting period. For example, the first several submissions would be provided as follows until the permanent reporting process using the prescribed forms begins:

	<u>Reporting Period</u>	<u>Due Date</u>
1.	September 1 - 11, 2005	September 19, 2005;
2.	September 12 - 18, 2005	September 26, 2005;
3.	September 19 - 25, 2005	October 3, 2005
	Etc. (until permanent reporting process begins)	

To the extent you have existing reports that include all of the requested information, you may submit those reports in response to this request. Also, if you consider the requested information to be confidential, you may file it under a protective order, a sample of which is enclosed for your reference. Please contact the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs at 586-2800 to execute a stipulated protective order.

Additionally, as noted previously,³² the Commission strongly urges all manufacturers, wholesalers, jobbers, and retailers to inform the Commission of any breach of compliance with, and any significant adverse impact of, the Gas Price Cap Law. As soon as you become aware of any such event or occurrence, please notify the Commission. Your cooperation will assist us in monitoring the actual impacts of the Gas Price Cap Law.

Finally, in the event you wish to have the gas price cap formula adjusted, you may file a petition with the Commission under HRS § 486H-16(a). Petitions shall be made in compliance with Hawaii Administrative Rules, Chapter 6-61, Rules of Practice and Procedure before the Public Utilities Commission.

³²Decision and Order No. 21994, Docket No. 05-0002, August 1, 2005.

Shell Oil Corporation
September 12, 2005
Page 3

If you have any questions regarding the above, please contact Kevin M. Katsura,
Commission Counsel, at (808) 586-2020.

Sincerely,



Carlito P. Caliboso
Chairman

CPC:PN:ac

Enclosure

c: Theodore E. Liu, DBEDT
Maurice H. Kaya, SPC
John E. Cole, DCA

Exhibit C

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
465 S. KING STREET, #103
HONOLULU, HAWAII 96813

CARLITO P. CALIBOSO
CHAIRMAN

WAYNE H. KIMURA
COMMISSIONER

JANET E. KAWELO
COMMISSIONER

December 19, 2005

VIA U.S. MAIL

Michael H. Lau, Esq.
841 Bishop Street, Suite 400
Honolulu, Hawaii 96813

Jon S. Itomura, Esq.
P.O. Box 541
Honolulu, Hawaii 96809

Bruce Nakamura, Esq.
Kobayashi, Sugita & Goda
999 Bishop Street, Suite 2600
Honolulu, Hawaii 96813-4430

Craig I. Nakanishi, Esq.
Rush Moore LLP
737 Bishop Street, 2400
Honolulu, Hawaii 96813

Marc E. Rousseau, Esq.
Cades Schutte LLP
1000 Bishop Street, 1200
Honolulu, Hawaii 96813

Re: Protective Order No. 05-PO-12

Gentlemen:

As you know, pursuant to Hawaii Revised Statutes ("HRS") § 486H-13(m), the Commission has the authority to determine whether petroleum manufacturers (refiners), wholesalers, and jobbers are complying with HRS Chapter 486H. In connection with this obligation, the Commission is authorized to obtain the assistance of the Department of Business, Economic Development, and Tourism ("DBEDT").

As such, by letter dated September 7, 2005, the Commission and DBEDT notified the petroleum manufacturers, wholesalers and jobbers doing business in the State of Hawaii that they were establishing mandatory petroleum market data and information reporting requirements. See Protective Order No. 05-PO-12 at 3. In anticipation that the information requested by the Commission and DBEDT would contain information confidential to the parties, Chevron U.S.A. Inc. ("Chevron"), Tesoro Hawaii Corporation ("Tesoro"), Shell Oil Company ("Shell"), Hawaii Petroleum Marketers Association ("HMPA") members, and the Division of Consumer Advocacy ("Consumer Advocate") (collectively, the "Parties") entered into Protective Order No. 05-PO-12.

Paragraph 4 of Protective Order No. 05-PO-12 states that: "A Party may designate as confidential any information it believes, in good faith, contains Confidential Information."

EXHIBIT C

Michael H. Lau, Esq.
Jon S. Itomura, Esq.
Bruce Nakamura, Esq.
Craig I. Nakanishi Esq.
Marc E. Rousseau, Esq.
December 19, 2005
Page 2

Such information shall be protected against disclosure to a non-qualified person pursuant to the terms of this protective order unless such information is declassified, or permission to disclose the information to such non-qualified person is granted by the Party claiming confidentiality, as provided in paragraph 13 below." See Protective Order No. 05-PO-12 at 7-8. DBEDT is a "qualified person" under the terms of the agreement. id. at 11-12.

Paragraph 4 further states that:

In addition, a Party may designate certain information (including information that the Party would not normally disclose to competitors, customers or suppliers) as being confidential and not to be distributed to other Parties (not including the Consumer Advocate) by notifying the Commission and the Consumer Advocate in writing setting forth in particularity the information to be kept as confidential and not available to the other Parties (hereinafter referred to as the "Level Two Confidential Information"). With respect to such Level Two Confidential Information, (a) the Parties from whom such information is being withheld shall be treated as a non-qualified person from whom such information shall be protected against disclosure in accordance with the terms of this protective order and (b) except as limited in subpart (a) above, in all other respects, the Level Two Confidential Information shall be treated in the same manner as all other Confidential Information. In addition to other designations in this protective order, the Party submitting any Level Two Confidential Information or any other Confidential Information that is not to be distributed to other parties shall place upon the applicable material the following legend:

**"CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER
TO BE VIEWED ONLY BY THE
PUBLIC UTILITIES COMMISSION
OR THE CONSUMER ADVOCATE"**

See Protective Order No. 05-PO-12 at 8.

Michael H. Lau, Esq.
Jon S. Itomura, Esq.
Bruce Nakamura, Esq.
Craig I. Nakanishi Esq.
Marc E. Rousseau, Esq.
December 19, 2005
Page 3

Level Two Confidential Information as defined in Paragraph 4 only appears to limit the information that may be disseminated to other "Parties." DBEDT is not defined as a party under the agreement. Accordingly, Protective Order No. 05-PO-12 appears to allow the Commission to provide DBEDT with Level Two Confidential Information so long as DBEDT employees have executed Exhibit A of the protective order. Signed copies of Exhibit A were filed by DBEDT on November 22, 2005.

If you disagree with this analysis and believe that the Commission is not entitled to provide DBEDT with Level Two Confidential Information, please inform me in writing, including the reasons for your disagreement, by January 3, 2006.

If you have any questions or concerns, please feel free to contact me at (808) 586-2180.

Sincerely,



Stacey Kawasaki Djou
Chief Legal Counsel

SKD:sl